

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE COMMISSIONER OF INSURANCE TO APPOINT A MEMBER OF THE PUBLIC TO THE BOARD OF DIRECTORS OF ANY HEALTH INSURANCE ISSUER WITH MORE THAN 25 FULL-TIME EMPLOYEES DOING BUSINESS IN THIS STATE THAT IS INCORPORATED AS A NONPROFIT CORPORATION UNDER TITLE 35, CHAPTER 2, MCA; GENERALLY REVISING NONPROFIT CORPORATION LAWS TO ADDRESS THE RIGHTS, OBLIGATIONS, AND LIABILITIES OF DIRECTORS APPOINTED BY THE COMMISSIONER; AND AMENDING SECTIONS 35-2-415, 35-2-416, 35-2-418, 35-2-425, 35-2-436, AND 35-2-446, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Nonprofit corporations -- board of directors. (1) This section applies to any health insurance issuer that:

- (a) is doing business in this state;
- (b) has more than 25 full-time employees; and
- (c) is incorporated as a nonprofit corporation under Title 35, chapter 2.

(2) (a) (i) The commissioner shall appoint a member of the public to the board of directors of a nonprofit corporation described in subsection (1).

(ii) The appointee shall serve a term of 3 years. If an appointee resigns or is unable to complete a 3-year term, the commissioner shall appoint a replacement to serve on the board of directors.

(iii) The commissioner may remove an appointee at any time and name a replacement to serve on the board of directors.

(b) An appointee has all of the rights, obligations, and liabilities of a director provided for in Title 35, chapter 2, part 4.

(c) An appointee in performing the duties of a director may act in a manner that the appointee believes is in the best interests of the public or customers of the nonprofit corporation rather than in the best interests of the nonprofit corporation.

(d) An appointee, as provided in 35-2-425, must be reimbursed by the insurance division of the state

auditor's office for documented reasonable expenses, including travel and meal expenses, incurred in carrying out the duties of a director and is not entitled to any reimbursement from the nonprofit corporation.

Section 2. Section 35-2-415, MCA, is amended to read:

"35-2-415. Qualifications and numbers of directors. (1) All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

(2) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(3) The number of directors may be increased or decreased, but to not fewer than three, from time to time by amendment to or in the manner prescribed in the articles or bylaws.

(4) If an individual is appointed to the board as provided in [section 1], the articles or bylaws do not have to be amended to reflect that additional member of the board of directors."

Section 3. Section 35-2-416, MCA, is amended to read:

"35-2-416. General standards for directors. (1) ~~A director~~ director's shall discharge his duties as a director, including ~~his~~ duties as a member of a committee, must be discharged:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) except for a director appointed pursuant to [section 1], in a manner the director reasonably believes to be in the best interests of the corporation. A director appointed pursuant to [section 1] may act in a manner that the appointee believes is in the best interests of the public or customers of the corporation rather than in the best interests of the corporation.

~~(2) In discharging his duties, a~~ A director, in the discharge of a director's duties, is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters the director reasonably believes are within the person's professional or expert competence;

(c) a committee of the board of which the director is not a member, as to matters within ~~its~~ the committee's jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.

(5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) This chapter does not modify any limitation of liability of directors provided by Title 27."

Section 4. Section 35-2-418, MCA, is amended to read:

"35-2-418. Director conflict of interest. (1) (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable ~~or~~ and may not be the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (2) or (3).

(b) It is not a conflict of interest for a director appointed pursuant to [section 1] to act in a manner that is not in the best interests of the corporation if the director's actions are in accordance with the provisions of [section 1].

(2) A transaction in which a director of a public benefit corporation or religious corporation has a conflict of interest may be approved:

(a) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(b) before or after it is consummated by obtaining approval of:

1 (i) the attorney general; or

2 (ii) a state district court in an action in which the attorney general is joined as a party.

3 (3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be
4 approved if:

5 (a) the material facts of the transaction and the director's interest were disclosed or known to the board
6 of directors or a committee of the board and the board or committee of the board authorized, approved, or
7 ratified the transaction; or

8 (b) the material facts of the transaction and the director's interest were disclosed or known to the
9 members and they authorized, approved, or ratified the transaction.

10 (4) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

11 (a) another entity in which the director has a material interest or in which the director is a general partner
12 is a party to the transaction; or

13 (b) another entity of which the director is a director, officer, or trustee is a party to the transaction.

14 (5) For purposes of subsections (2) and (3), a conflict of interest transaction is authorized, approved,
15 or ratified; if it receives the affirmative vote of a majority of the directors on the board or on the committee who
16 have no direct or indirect interest in the transaction. However, a transaction may not be authorized, approved,
17 or ratified under this section by a single director. If a majority of the directors on the board who do not have ~~no~~
18 a direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is
19 present for the purpose of taking action under this section. The presence of or a vote cast by a director with a
20 direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a)
21 or (3)(a) if the transaction is otherwise approved as provided in subsection (2) or (3).

22 (6) For purposes of subsection (3)(b), a conflict of interest transaction is authorized, approved, or ratified
23 by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by
24 or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by
25 or voted under the control of an entity described in subsection (4)(a) may not be counted in a vote of members
26 to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (3)(b).
27 The vote of these members, however, is counted in determining whether the transaction is approved under other
28 sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in
29 a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this
30 section.

(7) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions."

Section 5. Section 35-2-425, MCA, is amended to read:

"35-2-425. Compensation of directors. Unless the articles or bylaws provide otherwise, the board of directors may fix the compensation of directors. A director appointed pursuant to [section 1] is entitled to reimbursement only by the insurance division of the state auditor's office as provided for in [section 1]."

Section 6. Section 35-2-436, MCA, is amended to read:

"35-2-436. Liability for unlawful distributions. (1) Unless a director complies with the applicable standards of conduct described in 35-2-416, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-2-416; and

(b) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

(3) This section does not apply to a director appointed pursuant to [section 1]."

Section 7. Section 35-2-446, MCA, is amended to read:

"35-2-446. Definitions. As used in 35-2-446 through 35-2-454, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or the participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(c) Director includes a person appointed to the board of directors pursuant to [section 1].

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-2-452, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal."

NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 30, and the provisions of Title 33, chapter 30, apply to [section 1].

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